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No. 84-460

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

CLIFTON S. GREENE, Pro Se,

Petitioner,

v.

NYC HEALTH & HOSPITAL CORPORATION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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November 8, 1984

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QUESTION PRESENTED

Whether the District Court properly dismissed, and the Court of Appeals properly affirmed the dismissal of the complaint, in reliance upon this Court's decision in Paul v. Davis, 424 U.S. 693 (1976), where petitioner's claim sounds in defamation?

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STATEMENT OF THE CASE

In July 1982, petitioner commenced this action in the United States District Court for the Eastern District of New York (C1-4).* In his complaint, as

*Unless otherwise indicated, references within parentheses are to the Appendix to the Petition. Petitioner's notice of claim, recited in and annexed to his complaint (C3-4) is not included in the Appendix to the Petition but is cited by respondent.

amplified by a notice of claim annexed thereto, petitioner alleged that his wife Irene received treatment at respondent's Kings County Hospital, located in Brooklyn, New York. Petitioner further alleged that respondent had wrongfully referred a bill for $819 to a collection agency although the respondent was not entitled to recover that amount for its services. Petitioner's wife's name appeared on a published list, causing the name of his wife "to be held in disrepute" and causing "deep shame, lasting humiliation and irreparable damages" to petitioner (C3). Petitioner requested $5,000,000 in damages and relief enjoining respondent from making public such "fraudulent" indebtedness (C4, D4).

The respondent, which served its answer, thereafter moved for judgment on the pleadings. The United States District Court for the Eastern District of New York (Glasser, J.), granted the respondent's motion and a judgment was entered dismissing the complaint (B1-6). In his opinion, the District Judge held that even if the complaint were

framed as a suit pursuant to 42 U.S.C. §1983, the damage to petitioner and his wife's reputation, standing alone, would not constitute a deprivation of a federal right giving rise to a federal cause of action, citing the decision of this Court in Paul v. Davis, 424 U.S. 693 (1976) (B2-3). The District Court further held that petitioner's reference to 10 U.S.C. Ch. 55, which governs medical and dental care of military personnel, and regulations promulgated thereunder, did not provide a ground for maintaining federal jurisdiction since petitioner was not seeking benefits pursuant to such laws and regulations (B2).

On petitioner's appeal to the United Court of Appeals for the Second Circuit, that Court affirmed "substantially for the reasons set forth" in the opinion of the District Court (A1-2).

REASONS FOR DENYING THE WRIT

PETITIONER HAS FAILED TO SET FORTH ANY IMPORTANT REASON FOR GRANTING A WRIT OF CERTIORARI IN THIS CASE.

Petitioner does not seek review by this Court to resolve a conflict between the determination of the District Court, affirmed by the Court of Appeals, and the decisions of other federal or state courts. Petitioner does not present any important issue meriting review by this Court. Rather, the questions raised in this petition are frivolous, and the petition should be denied.

A reading of petitioner's complaint, annexed notice of claim and petition to this Court, makes it clear that petitioner seeks redress for the publication of allegedly defamatory material. However, as this Court held in Paul v. Davis, 424 U.S. 693 (1976), reh. den., 425 U.S. 985 (1976), defamation by a government official does not establish a claim under 42 U.S.C. §1983 or the Fourteenth Amendment. To hold otherwise would

make the "Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States." Paul v. Davis, supra, p. 701.

Petitioner's reliance on 10 U.S.C. Ch. 55, and regulations promulgated thereunder, does not enable him to state a federal claim against the respondent. That statute deals with health benefits of members and certain former members of the military. Petitioner, however, is not seeking to obtain any health benefits or avoid any claim for services by respondent. Accordingly, the complaint was properly dismissed. Under the circumstances, petitioner has failed to tender any issue meriting review by this Court.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

November 8, 1984

Respectfully submitted,

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